THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO.19854 of 1999

DATED: 19-04-2007

Between:-

M . Satyanarayana Reddy and others.

.. Petitioners

and

The Municipal Corporation of Hyderabad represented by its Commissioner and others.

.. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO.19854 of 1999

ORDER:

This writ petition is filed seeking a mandamus declaring the action of the respondents in treating the repairs and remodeling of the old structures in premises bearing Municipal No.17-1-382/K/B/23, Ward No.17, Block-1 situated at Champapet, Saidabad, Hyderabad as new structures and directing the petitioners to remove the same immediately through notices, dated 16.09.1999 and 20.09.1999 respectively, as arbitrary and illegal.

The brief facts of the case are that about forty years ago, the father of the petitioners 1 to 3 and husband of the 4th petitioner, along with his brothers, constructed six poultry sheds in an extent of 2337 sq.mtrs, out of the total extent of 14,900 sq.mtrs. of joint property in Sy.Nos.116, 167, 168, 169 and 170 situated at Champapet, Saidabad village, Hyderabad. Thereafter, he also constructed a para-boiled rice mill and Dal mill, after obtaining license from Small Scale Industries Unit. Originally, the said area was included in industrial zone and subsequently it was developed into residential zone as hundreds of houses have been built around the said area. While so, the Government of A.P. initiated anti-population measures and, as part of the same, the 1st respondent issued proceedings, dated 22.03.1990, stipulating conditions for running the industries. As per the said conditions and anti-population measures taken by the Government, it

was not possible to run the factory and poultry. Hence, the father of the petitioners 1 to 3 converted the said sheds into marriage hall. He was running the marriage hall by paying tax to the Municipal Corporation of Hyderabad (for short 'M.C.H.'). The 1st respondent had also allotted premises numbers. Thereafter, after the death of their father in the year 1998, the petitioners 1 to 3 started paying tax to M.C.H. Since compound wall of the marriage hall was in dilapidated condition, the petitioners removed a part of the same and fixed grills and got plastered the remaining portion. The shutters were also replaced with new shutters. The M.C.H., treating the said repairs as new constructions, issued a notice, dated 16.09.1999, under Section 461 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') asking the petitioners to remove the constructions immediately, without giving any prior notice to them. Thereafter, another notice, dated 20.09.1999, was issued under Section 452 of the Act, asking the petitioners to show cause as to why the said constructions shall not be removed/altered or pulled down. The petitioners complain that the notice under Section 452 of the Act has to be first issued and then the notice under Section 461 of the Act should be. But, contrary to the same, notice under Section 461 of the Act has been first issued by the M.C.H. They further complain that the M.C.H., at the instigation of the 3rd respondent- District Collector, Hyderabad, is taking steps to pull down the constructions, treating the same as new constructions, without giving any opportunity to them. The said action of the respondents in treating the repair works as new constructions and asking them to remove the same, without giving prior notice and without affording opportunity, is arbitrary and illegal. Hence, this writ petition.

Despite the fact that notices are served on the respondents, the respondents have not chosen to file any counter.

Heard both sides.

The main contention of the learned counsel for the petitioners is that before initiating any action under Section 461 of the Act, the authorities are duty bound to initiate proceedings as provided for under Section 452 of the Act, by issuing a written notice calling for explanation as to why such building or work shall not be removed, altered or pulled down.

Since the respondents have not chosen to file any counter, this Court has no option but to accept the contentions of the petitioners. However, in the instant case, the respondents first issued the notice under Section 461 of the Act and subsequently issued the notice under Section 452 of the Act, which is contrary to the provisions of the Act.

In view of the above, the petitioners are hereby directed to treat the said notice, dated 16.09.1999, issued under Section 461 of the Act, as a notice issued under Section 452 of the Act, and offer their explanation within a period of four weeks from the date of receipt of a copy of this order. On such explanation, the authorities shall consider the same after giving an opportunity as provided for under Section 452 (1) (b) of the Act to the petitioners and pass appropriate orders.

With the above directions, the writ petition is disposed of. There shall be no order as to costs.

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GOPALA KRISHNA TAMADA, J

19th April, 2007

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